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EXAMINER
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TOMASZEWSKI, MICHAEL

ART UNIT	PAPER NUMBER
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3626

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07/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/053,436

Applicant(s)

O'BRIEN ET AL.

Examiner

Mike Tomaszewski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 April 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 and 16-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Notice To Applicant***

1. This communication is in response to the amendment filed on RCE. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office Action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/5/07 has been entered. Claims 1-14 and 16-35 are currently pending.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-14 and 16-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Ballantyne et al.* (5,867,821; hereinafter *Ballantyne*), in view of *Soll et al.* (2003/0055679; hereinafter *Soll*), and in view of *Joao* (6,283,761; hereinafter *Joao*).

(A) As per currently amended claim 1, *Ballantyne* discloses an interactive system for providing information to patients in a non-hospital medical setting comprising:

- (1) at least one video display unit located within at least one examination/consultation room in a medical setting (*Ballantyne*: abstract; col. 2, lines 12-15; Fig. 1-12B);
- (2) a list of available programs for viewing by a patient (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 9; Fig. 1-12B);
- (3) a manual device for entering a program number selected from said list by said patient (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 9; Fig. 1-12B); and
- (4) an electronic device containing a plurality of video files connected to said at least one video display so that a program selected by said patient using said manual device is provided by said electronic device to said at least one video display unit (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 9; Fig. 1-12B).

*Ballantyne*, however, fails to expressly disclose an interactive system for providing information to patients in a medical setting comprising:

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- (5) at least one video display unit located within at least one examination/consultation room in a non-hospital medical setting;
- (6) means for changing and updating said video files on said electronic device.

Nevertheless, these features are old and well known in the art, as evidenced by *Soll* and *Joao*. In particular, *Soll* and *Joao* discloses an interactive system for providing information to patients in a medical setting comprising:

- (5) at least one video display unit located within at least one examination/consultation room in a *non-hospital* medical setting (*Soll*: ¶¶ [0080] – [0082]) (Examiner also notes that *Ballantyne* strongly suggests this feature, albeit not expressly.);
- (6) means for changing and updating said video files on said electronic device (*Joao*: abstract; col. 16, line 4-col. 20, line 39).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Soll* with the teachings of *Ballantyne* and *Joao* with the motivation of providing an apparatus and a method for processing and/or for providing healthcare-related information to individuals, such as patients (*Soll*: abstract).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Joao* with the teachings of *Ballantyne* and *Soll* with the

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motivation of providing an apparatus and a method for processing and/or for providing healthcare-related information to individuals, such as patients (*Joao*: col. 8, lines 3-7).

(B) As per original claim 2, *Ballantyne* fails to *expressly* disclose an interactive system according to claim 1, wherein said changing and updating means is external to said medical setting.

Nevertheless, these features are old and well known in the art, as evidenced by *Joao*. In particular, *Joao* discloses an interactive system according to claim 1, wherein said changing and updating means is external to said medical setting (*Joao*: abstract; col. 16, line 4-col. 20, line 39; Fig. 1-15B).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Joao* with the teachings of *Ballantyne* and *Soll* with the motivation of providing an apparatus and a method for processing and/or for providing healthcare-related information to individuals, such as patients (*Joao*: col. 8, lines 3-7).

(C) As per original claim 3, *Ballantyne* fails to *expressly* disclose an interactive system according to claim 1, wherein said changing and updating means is internal to said medical setting.

Nevertheless, these features are old and well known in the art, as evidenced by *Joao*. In particular, *Joao* discloses an interactive system according to claim 1, wherein said changing and updating means is internal to said medical setting (*Joao*: abstract; col. 16, line 4-col. 20, line 39; Fig. 1-15B).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Joao* with the teachings of *Ballantyne* and *Soll* with the motivation of providing an apparatus and a method for processing and/or for providing healthcare-related information to individuals, such as patients (*Joao*: col. 8, lines 3-7).

(D) As per currently amended claim 4, *Ballantyne* discloses an interactive system for providing information to patients in a medical setting comprising:

- (1) at least one video display unit located within a medical setting (*Ballantyne*: abstract; col. 2, lines 12-15; Fig. 1-12B);
- (2) a list of available programs for viewing by a patient (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 9; Fig. 1-12B);
- (3) a manual device for entering a program number selected from said list by said patient (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 9; Fig. 1-12B);
- (4) an electronic device containing a plurality of video files connected to said at least one video display so that a program selected by said patient using said manual device is provided by said electronic device to said at least one video display unit (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 9; Fig. 1-12B); and
- (5) said electronic device maintaining each program selected by said viewer (*Ballantyne*: abstract; col.6, line 66-col. 7, line 1; Fig. 1-12B).

*Ballantyne*, however, fails to *expressly* disclose an interactive system for providing information to patients in a medical setting comprising:

- (6) said electronic device maintaining a *log* of each program selected by said viewer; and
- (7) means for changing and updating said video files on said electronic device.

Nevertheless, these features are old and well known in the art, as evidenced by *Joao*. In particular, *Joao* discloses an interactive system for providing information to patients in a medical setting comprising:

- (6) said electronic device maintaining a *log* of each program selected by said viewer (Soll: ¶¶ [0055], [0181] – [0184]); and
- (7) means for changing and updating said video files on said electronic device (Joao: abstract; col. 16, line 4-col. 20, line 39).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Soll* with the teachings of *Ballantyne* and *Joao* with the motivation of providing an apparatus and a method for processing and/or for providing healthcare-related information to individuals, such as patients (*Soll*: abstract).



One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Joao* with the teachings of *Ballantyne* and *Soll* with the motivation of providing an apparatus and a method for processing and/or for providing healthcare-related information to individuals, such as patients (*Joao*: col. 8, lines 3-7).

(E) As per original claim 5, *Ballantyne* fails to *expressly* disclose an interactive system according to claim 4, wherein said changing and updating means comprises means for accessing data in said log maintained by said electronic device.

Nevertheless, these features are old and well known in the art, as evidenced by *Joao*. In particular, *Joao* discloses an interactive system according to claim 4, wherein said changing and updating means comprises means for accessing data in said log maintained by said electronic device (*Joao*: abstract; col. 16, line 4-col. 20, line 39; Fig. 1-15B).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Joao* with the teachings of *Ballantyne* and *Soll* with the motivation of providing an apparatus and a method for processing and/or for providing healthcare-related information to individuals, such as patients (*Joao*: col. 8, lines 3-7).

(F) As per original claim 6, *Ballantyne* discloses an interactive system according to claim 4, further comprising said changing and updating means communicating with said electronic device via a satellite link (*Ballantyne*: abstract; col. 6, lines 47-57; Fig. 1-12B).

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(G) As per original claim 7, *Ballantyne* fails to *expressly* disclose an interactive system according to claim 4, further comprising said changing and updating means communicating with said electronic device via at least one of a telephone line and a terrestrial line.

Nevertheless, these features are old and well known in the art, as evidenced by *Joao*. In particular, *Joao* discloses an interactive system according to claim 4, further comprising said changing and updating means communicating with said electronic device via at least one of a telephone line and a terrestrial line (*Joao*: abstract; col. 3, lines 45-53; Fig. 1-15B).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Joao* with the teachings of *Ballantyne* and *Soll* with the motivation of providing an apparatus and a method for processing and/or for providing healthcare-related information to individuals, such as patients (*Joao*: col. 8, lines 3-7).

(H) As per original claim 8, *Ballantyne* fails to *expressly* disclose an interactive system according to claim 4, wherein said changing and updating means comprises an electronic device located at a location remote from said medical setting.

Nevertheless, these features are old and well known in the art, as evidenced by *Joao*. In particular, *Joao* discloses an interactive system according to claim 4, wherein said changing and updating means comprises an electronic device located at a location remote from said medical setting (*Joao*: abstract; col. 3, line 33-col. 4, line 5; Fig. 1-15B).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Joao* with the teachings of *Ballantyne* and *Soll* with the motivation of providing an apparatus and a method for processing and/or for providing healthcare-related information to individuals, such as patients (*Joao*: col. 8, lines 3-7).

(I) As per original claim 9, *Ballantyne* discloses an interactive system according to claim 1, wherein said plurality of video files on said electronic device include video programs about healthcare information (*Ballantyne*: abstract; col. 1, line 65-col. 2, line 62; Fig. 1-12B).

The Examiner has noted insofar as claim 9 recites "at least one of medical news, medical illustrations, product education, medical conditions and healthcare information," healthcare information has been recited.

(J) As per original claim 10, *Ballantyne* fails to *expressly* disclose an interactive system according to claim 9, wherein at least some of said video programs contain advertisements for medical products and instructions for taking such medical products.

Nevertheless, these features are old and well known in the art, as evidenced by *Joao*. In particular, *Joao* discloses an interactive system according to claim 9, wherein at least some of said video programs contain advertisements for medical products and instructions for taking such medical products (*Joao*: abstract; col. 16, line 33-col. 20, line 39; Fig. 1-15B).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Joao* with the teachings of *Ballantyne* and *Soll* with the motivation of providing an apparatus and a method for processing and/or for providing healthcare-related information to individuals, such as patients (*Joao*: col. 8, lines 3-7).

(K) As per original claim 11, *Ballantyne* discloses an interactive system according to claim 1, wherein said list of available programs comprises an on-screen display of said available programs (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 27; Fig. 1-12B).

(L) As per currently amended claim 12, *Ballantyne* discloses an interactive system for providing information to patients in a medical setting comprising:

- (1) at least one video display unit located within a medical setting (*Ballantyne*: abstract; col. 2, lines 12-15; Fig. 1-12B);
- (2) a list of available programs for viewing by a patient (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 9; Fig. 1-12B);
- (3) a manual device for entering a program number selected from said list by said patient (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 9; Fig. 1-12B);
- (4) an electronic device containing a plurality of video files connected to said at least one video display so that a program selected by said patient using said manual device is provided by said electronic device to said at least

one video display unit (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 9; Fig. 1-12B); and

- (5) a hand-held user interface containing said list of available programs and said manual device (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 27; Fig. 1-12B).

*Ballantyne*, however, fails to expressly disclose an interactive system for providing information to patients in a medical setting comprising:

- (6) means for changing and updating said video files on said electronic device.

Nevertheless, these features are old and well known in the art, as evidenced by *Joao*. In particular, *Joao* discloses an interactive system for providing information to patients in a medical setting comprising:

- (6) means for changing and updating said video files on said electronic device (*Joao*: abstract; col. 16, line 4-col. 20, line 39).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Joao* with the teachings of *Ballantyne* with the motivation of

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providing an apparatus and a method for processing and/or for providing healthcare-related information (*Joao*: col. 8, lines 3-7).

(M) As per original claim 13, *Ballantyne* discloses an interactive system according to claim further comprising said manual device comprising a remote control device having a keypad, touchpad, mouse or keyboard (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 27; Fig. 1-12B).

(N) As per currently amended claim 14, *Ballantyne* discloses an interactive system according to claim 1, further comprising said at least one video display unit comprising at least one television monitor located within a patient examining room in said non-hospital medical setting (*Ballantyne*: abstract; col. 1, line 65-col. 2, line 63; Fig. 1-12B).

(O) As per original claim 16, *Ballantyne* fails to *expressly* disclose an interactive system according to claim 1, further comprising said at least one video display unit comprising at least one television monitor located in a pharmacy setting.

Nevertheless, these features are old and well known in the art, as evidenced by *Joao*. In particular, *Joao* discloses an interactive system according to claim 1, further comprising said at least one video display unit comprising at least one television monitor located in a pharmacy setting (*Joao*: abstract; col. 23, line 60-col. 24, line 11; Fig. 1-15B).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Joao* with the teachings of *Ballantyne* and *Soll* with the motivation of providing an apparatus and a method for processing and/or for providing healthcare-related information to individuals, such as patients (*Joao*: col. 8, lines 3-7).

(P) As per currently amended claim 17, *Ballantyne* discloses an interactive system for providing information to patients in a medical setting comprising:

- (1) at least one video display unit located within a medical setting (*Ballantyne*: abstract; col. 2, lines 12-15; Fig. 1-12B);
- (2) a list of available programs for viewing by a patient (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 9; Fig. 1-12B);
- (3) a manual device for entering a program number selected from said list by said patient (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 9; Fig. 1-12B);
- (4) an electronic device containing a plurality of video files connected to said at least one video display so that a program selected by said patient using said manual device is provided by said electronic device to said at least one video display unit (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 9; Fig. 1-12B); and
- (5) said medical setting having a plurality of patient examining/consultation rooms and said system including a television monitor in each of said

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examining/consultation rooms (*Ballantyne*: abstract; col. 1, line 65-col. 2, line 63; col. 8, line 65-col. 10, line 27; Fig. 1-12B).

*Ballantyne*, however, fails to expressly disclose an interactive system for providing information to patients in a medical setting comprising:

- (6) means for changing and updating said video files on said electronic device.

Nevertheless, these features are old and well known in the art, as evidenced by *Joao*. In particular, *Joao* discloses an interactive system for providing information to patients in a medical setting comprising:

- (6) means for changing and updating said video files on said electronic device (*Joao*: abstract; col. 16, line 4-col. 20, line 39).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Joao* with the teachings of *Ballantyne* and *Soll* with the motivation of providing an apparatus and a method for processing and/or for providing healthcare-related information to individuals, such as patients (*Joao*: col. 8, lines 3-7).



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(Q) As per original claim 18, *Ballantyne* discloses an interactive system according to claim 17, further comprising each said television monitor being connected to said electronic device (*Ballantyne*: abstract; col. 1, line 65-col. 2, line 63; col. 8, line 65-col. 10, line 27; Fig. 1-12B).

(R) As per currently amended claim 19, *Ballantyne* discloses an interactive system according to claim 1, further comprising a plurality of video display units in said medical setting and said electronic device having a capability to simultaneously provide the same program content to each of said video display units (*Ballantyne*: abstract; col. 1, line 65-col. 2, line 63; col. 8, line 65-col. 10, line 27; Fig. 1-12B).

(S) As per original claim 20, *Ballantyne* discloses an interactive system according to claim 1, wherein said list of available programs comprises a list of channels and a program associated with each of said channels (*Ballantyne*: abstract; col. 1, line 65-col. 2, line 63; col. 8, line 65-col. 10, line 27; Fig. 1-12B).

(T) As per currently amended claim 21, *Ballantyne* discloses an interactive program for providing information to patients in a medical setting comprising:

- (1) at least one video display unit located within a medical setting (*Ballantyne*: abstract; col. 2, lines 12-15; Fig. 1-12B);

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- (2) a list of available programs for viewing by a patient (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 9; Fig. 1-12B);
- (3) a manual device for entering a program number selected from said list by said patient (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 9; Fig. 1-12B);
- (4) an electronic device containing a plurality of video files connected to said at least one video display so that a program selected by said patient using said manual device is provided by said electronic device to said at least one video display unit (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 9; Fig. 1-12B); and
- (5) said manual device comprising a device for generating an infrared signal and said at least one video display unit has means for receiving said infrared signal and for transmitting said infrared signal to said electronic device (*Ballantyne*: abstract; col. 1, line 65-col. 2, line 63; col. 8, line 65-col. 10, line 27; Fig. 1-12B).

*Ballantyne*, however, fails to expressly disclose an interactive system for providing information to patients in a medical setting comprising:

- (6) means for changing and updating said video files on said electronic device.

Nevertheless, these features are old and well known in the art, as evidenced by *Joao*. In particular, *Joao* discloses an interactive system for providing information to patients in a medical setting comprising:

- (6) means for changing and updating said video files on said electronic device  
(*Joao*: abstract; col. 16, line 4-col. 20, line 39).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Joao* with the teachings of *Ballantyne* and *Soll* with the motivation of providing an apparatus and a method for processing and/or for providing healthcare-related information to individuals, such as patients (*Joao*: col. 8, lines 3-7).

- (U) As per claim 22, *Ballantyne* discloses an interactive system according to claim 1, having an automatic turn-on feature and an automatic turn-off feature (*Ballantyne*: abstract; col. 8, lines 60-64; Fig. 1-12B).

- (V) Claims 23-29 are substantially similar in scope to claims 1-18 and therefore, are rejected on the same basis as those claims.

As per the limitation in claim 29 reciting "a portable electronic device," *Ballantyne* discloses the use of a portable electronic device (*Ballantyne*: abstract; col. 8, line 65-col. 10, line 27; Fig. 1-12B).

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(W) Claims 30-34 are substantially similar in scope to claims 1-18 and therefore, are rejected on the same basis as those claims.

(X) As per original claim 35, *Ballantyne* fails to *expressly* disclose a method according to claim 34, further comprising utilizing said gathered information to compute an amount due from at least one of advertisers and sponsors.

Nevertheless, these features are old and well known in the art, as evidenced by *Joao*. In particular, *Joao* discloses a method according to claim 34, further comprising utilizing said gathered information to compute an amount due from at least one of advertisers and sponsors (*Joao*: abstract; col. 6, line 65-col. 7, line 7; Fig. 1-15B).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Joao* with the teachings of *Ballantyne* and *Soll* with the motivation of providing an apparatus and a method for processing and/or for providing healthcare-related information to individuals, such as patients (*Joao*: col. 8, lines 3-7).

#### ***Declaration***

4. Although the Declaration of Michael Collette (hereinafter Declaration) is moot in view of new ground(s) or rejection, it was carefully considered but was deemed to be insufficient and unpersuasive to overcome the rejections of the current and the prior Office Action, if they had been maintained, for the following reasons:

(A) Examiner notes that in assessing the weight to be given expert testimony, the examiner may properly consider, *inter alia*, the following:

- (1) The interest of the expert in the outcome of the case. For example, the fact that declarant is not independent of the inventor or the assignee is relevant to the weight to be given to the affidavit. *Cf. Redac Int'l, Ltd. V. Lotus Development Corp.*, 81 F.3d 1576, 38 USPQ2d 1665 (Fed. Cir. 1996) (holding that applicant committed inequitable conduct when applicant withheld information on significant prior connections with the author of the affidavit - the prior connection was considered material to patentability of the claims.). *See also, Pargon Podiatry Lab., Inc. v. KLM Lab., Inc.*, 948 F.2d 1182, 1191, 25 USPQ2d 1561, 1568 (Fed. Cir. 1993); and
- (2) An Assignee's opinion as to the purchaser's reason for buying the product is insufficient to demonstrate a nexus between the sales and the claimed invention. *In re Huang*, 100 F.3d 135, 140, 40 USPQ2d 1685, 1690 (Fed. Cir. 1996). *See* MPEP § 716.

As such, Examiner notes that Mr. Michael Collette is the President and CEO of Healthy Advice Networks and thus, an individual with a vested interest in the claimed invention. Therefore, the weight of the Declaration is assessed accordingly.

(B) Examiner notes further that in considering evidence of commercial success and long felt need, evidence should persuasively demonstrate that such success is not the result of heavy promotion or advertising, shift in advertising, consumption by purchasers normally tied to applicant or assignee, or other business events extraneous to the merits of the claimed invention, etc. *In re Mageli*, 470 F.2d 1380, 176 USPQ 305 (CCPA 1973) (conclusory statements or opinions that increased sales were due to the merits of the invention are entitled to little weight); *In re Noznick*, 478 F.2d 1260, 178 USPQ 43 (CPA 1973). See MPEP §§ 716.03 and 716.04.

In the instant application, the proffered evidence within the Declaration demonstrating commercial success is unpersuasive for several reasons.

First, there is no clear nexus between the claimed invention and the averred statements. The evidence of commercial success appears to merely consist of general anecdotal customer statements without any clear nexus to the claimed invention.

Second, it is not clear whether the commercial success was the result of heavy advertising or usage by purchasers normally tied to applicant or assignee. In other words, the Declaration is lacking persuasive evidence that Applicant's alleged commercial success was attributed to events relating to the merits of the claimed invention. As such, Examiner has given limited deference to the Declaration.

***Response to Arguments***

5. Applicant's arguments filed 2/14/07 have been considered but are either moot in view of the new ground(s) of rejection or rely upon or re-hash the issues addressed in previous Office Actions.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Tomaszewski whose telephone number is (571)272-8117. The examiner can normally be reached on M-F 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (571)272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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